IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.313/2001

Reserved on.27.7.2007

Decided on.22.8.2007

Sant Lal. **…Petitioner.**

Versus

Union of India and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioner : **Ms. Ranjana Parmar, Advocate.**

For the respondents **Mr. Janesh Mahajan, Central Government Counsel for respondents No.1 to 4.**

None for respondents No.5 to 9.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of the present petition which can be culled out from the pleadings of the parties are that the process for filling up the posts of Sub Inspectors by way of direct recruitment was initiated in the year 1977. The petitioner was selected for the post of Sub Inspector and was placed at Sr. No.12 of the merit list drawn at the time of selection. He joined his duties on 20.3.1978. The respondents No.5 to 9 were over age at the time of selection though their names found mention in the merit list drawn at the time of filling up the posts of Sub Inspectors by way of direct recruitment. Their case was taken with the competent authority by the Head of the Department for relaxation in age. The respondents No.5 to 9 were appointed by relaxation in age criteria and they joined in the month of July, 1980 as Sub

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

Inspectors. The petitioner was ranking senior to the respondents No.5 to 9 since he had joined his duties on 20.3.1978 and the respondents No.5 to 9 had joined their duties in the month of July, 1980. He was promoted to the post of Inspector on the basis of seniority determined as per date of appointment after qualifying the "E' test in the year 1984 on 15th August, 1986. The respondents No.5 to 9 were promoted to the post of Inspector in the year 1988.

It appears that a representation was made by the candidates who were over age at the time of selection and were appointed by relaxation in the Rules in the year 1980 to count their seniority as per the merit list drawn in the year 1977. The matter was taken up by the authorities with the Cabinet Secretary vide SSB letter dated 17.10.1995. The Cabinet Secretary referred the matter further to the Department of Personnel and Training and on the basis of the observations made by the Department of Personnel and Training on 29.11.1995, the seniority of the directly recruited Sub Inspectors was revised and re-fixed in the order of merit drawn at the time of recruitment vide letter dated 20.2.1997. Consequently the petitioner ranked junior to the respondents No.5 to 9 as per the seniority issued in the year 1997.

The petitioner made a representation to the Director on 1st May, 2000 assailing the action of the respondents whereby his seniority was depressed and the persons who were junior to him were shown above him. The representation made by the petitioner was rejected on 18th September, 2000.

Ms. Ranjana Parmar, Advocate had strenuously argued that her client was appointed as Sub Inspector on 20th March, 1978 and the respondents No.5 to 9 were appointed in the month of July, 1980 and could not rank senior to her client on the basis of decision taken on

17.10.1995, 22.11.1995, 29.11.1995, 20.2.1997 and 16.3.1998. Her further contention is that on the basis of date of joining as Sub Inspector, her client had qualified 'E' test in the year 1984 and was promoted to the post of Inspector in the year 1986 and the respondents No.5 to 9 were promoted to the post of Inspector in the year 1988 but by issuing corrigendum the seniority of respondents No.5 to 9 has been shown with effect from 1986.

Mr. Janesh Mahajan, Central Government Counsel had argued that the respondents No.5 to 9 were ranking senior in merit in the panel drawn at the time of recruitment but due to the ban imposed by the Government their case of relaxation in age was finally considered by the Government in the year 1980 which led to their appointment in the year 1980 only. In other words he had supported the orders of the authorities whereby the respondents No.5 to 9 have been shown senior to the petitioner in the cadre of Sub Inspectors as well as Inspectors.

I have heard the learned counsel for the parties and perused the record.

The scenario which emerges from the afore-stated facts is that the process for filling up the posts of Sub Inspectors by way of direct recruitment was initiated and culminated in the year 1977. The petitioner was appointed as Sub Inspector on 20.3.1978. The respondents No.5 to 9 were appointed as Sub Inspectors in the month of July, 1980. The representation has been made in the month of December, 1994 by one of the incumbents who was appointed in the year 1980 by relaxing the age criteria. The respondents have wrongly considered the representation made by one of the Inspectors after a gap of about 14 years. During this period of 14 years, the petitioner was promoted to the post of Inspector in the year 1986 and the respondents No.5 to 9 were promoted as

Inspectors in the year 1988 only. The representation made by the incumbent, who was over age was inordinately delayed and should not have been considered at all since it has resulted in unsettling the settled things. The effect of consideration of the representation made in the month of December, 1994 by the persons, who were appointed in the year 1980 was that the decisions have been taken vide Annexures R-2 to R-6 causing serious prejudice to the petitioner. He was appointed in the year 1978 and the respondents No.5 to 9 were appointed in the year 1980. On the basis of the decisions dated 17.10.1995, 22.11.1995, 29.11.1995, 20.2.1997 and 16.3.1998, the respondents No.5 to 9 are ranking senior to the petitioner in the seniority lists. They have been shown to be appointed as Sub Inspectors in the year 1978 though in fact, they were appointed in the year 1980. Their date of promotion has also been upgraded to the year 1986 though in fact they were promoted as Inspectors in the year 1988. The entire exercise undertaken by the respondents No.1 to 4 was arbitrary and thus violative of Article 14 of the Constitution of India. If the decision was to be taken at all, the same was required to be taken within a reasonable period of one year after their appointment in the year 1980. The respondents No.5 to 9 have accepted the position as it existed in the year 1980 for a considerable period of 14 years and they were estopped from challenging the same after a gap of 14 years causing serious prejudice to the petitioner. The petitioner's name has been depicted at Sr. No.30 in the seniority list dated 23rd December, 1997 and the respondents No.5 to 9 have been shown above him at Sr. No. 22, 26, 27, 28 and 29. This has been done on the basis of communication Annexure R-III.

It is evident from the seniority list of Inspectors issued in the month of April, 1999 that the petitioner's name figures at Sr. No.30 and his date of appointment as Sub Inspector/GD is 20th March, 1978 and date of

promotion to the post of Inspector/GD is 16th August, 1986. In the seniority list of Inspectors/GD, Annexure P-2, the petitioner is at Sr. No.8 and his date of appointment is 20th August, 1978 as SI/GD and 16.8.1986 as Inspector/GD.

Mr. Janesh Mahajan had contended that the notional seniority has been assigned to respondents No.5 to 9 as per instructions issued vide letters dated 22.11.1995 and 29.11.1995 respectively. The reasons assigned in communication dated 22.11.1995 is that the individual could not be held responsible for the delay in their appointment and thus their seniority could not be depressed and their seniority was required to be fixed on the basis of their rank in the merit prepared at the time of their selection for the appointment to the post of SI(GD).

A very important fact which has been over looked by the Department of Personal and Training in its decision dated 22.11.1995 is the inordinate delay in making the representations by the persons, who were though senior in the merit list prepared, but were appointed after the petitioner. In between the appointment made in the year 1980 of the respondents No.5 to 9 and the date of decision dated 22.11.1995 on the basis of which notional seniority has been accorded in favour of respondents No.5 to 9, the petitioner stood promoted to the post of Inspector in the year 1986 and the respondents No.5 to 9 were promoted as Inspectors in the year 1988. This position could not be altered to the detriment of the petitioner. If the respondents No.5 to 9 were aggrieved in any manner of not counting their seniority on the basis of merit list, they should have taken steps for the redressal of their grievance within a reasonable time and not after 14 years. It is not only that the respondents No.5 to 9 date of appointment has been reflected in the year 1978 as Sub

Inspectors but their promotions to the post of Inspectors have also been shown in the year 1986 above the petitioner.

This matter can be viewed from another angle. Respondents No.5 to 9 admittedly were over age at the time of considering their candidature by way of direct recruitment for the post of Sub Inspectors in the year 1977. It was only on the basis of relaxation by the competent authority that they were offered appointment that too in the month of July 1980. They have not worked with effect from 1978 to 1980 against the post of Sub Inspector. The petitioner had worked actually against the post of Sub Inspector with effect from 20th March, 1978 onwards. The respondents No.5 to 9 had been appointed Sub Inspectors after invoking relaxation clause vis-à-vis the candidates, who were fully eligible and qualified. The decision cannot work to his detriment.

The matter also need deeper consideration in view of the language employed in sub rule (d) of Rule 8 of the Central Reserve Police Force Rules, 1955 as applicable to the respondents organization. Sub-rule (d) of Rule 8 reads thus:

> **"(d) For those directly recruited as subordinate or under officer, their seniority shall be determined in the following manner, namely:-**
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> **(i) before confirmation every such officer shall take his seniority in the rank to which he is so recruited in accordance with the order of merit at the recruitment test; and**
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> **(ii) on confirmation, he shall take his seniority from the date of such confirmation;**
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> **Provided that in the case of officers confirmed on the same date, they will take their seniority in accordance with the order of merit at the recruitment test."**

If clauses (i) and (ii) of sub-Rule (d) of Rule 8 are read together, it is evident that before the confirmation, the seniority is to be reckoned as per the order of merit drawn at the recruitment test and thereafter on confirmation, the same has to be governed from the date of confirmation. The petitioner and respondents No.5 to 9 were appointed in the year 1978 and 1980 respectively and thereafter they were bound to be confirmed to the post of Sub Inspector. The Court can take judicial notice that the petitioner as well as respondents No.5 to 9 were confirmed between 1978 to 1994. The petitioner was bound to be confirmed before the respondents No.5 to 9 since he had joined the post of Sub Inspector in the year 1978 and thus required to rank senior to respondents No.5 to 9. This is the only conclusion which can be arrived at after reading sub clause (i) and (ii) of sub-rule (d) of Rule 8 ibid harmoniously. Thus the respondents No.5 to 9 could not rank senior to the petitioner in the seniority list of Sub Inspectors and the decision taken to assign them seniority with effect from 1986 instead of 1988 in the cadre of Inspectors is also arbitrary.

The question had come for consideration before the Hon'ble Supreme Court whether the respondents were entitled to seniority from 7.6.1972 as per the gradation list prepared by the Selection Board in ***State of Haryana and others Versus Balwant Singh and others***, (1996) 9 SCC 209 and their Lordships have held as under:

> **"The question, therefore, is: whether the respondents are entitled to seniority from 7.6.1972 as per the gradation list prepared by the Selection Board? Normally, the seniority of the candidates who are selected by direct recruitment would be determined with reference to the merit list prepared by the Selection Board. But, unfortunately, in this case, they could not join the service due to the pendency of the writ petition. The respondents themselves have to be blamed for the laches since they did not take any action, namely, impleading themselves in the pending writ petition nor filed any**

independent writ petition claiming for their appointment. After the dismissal of the writ petition, letters of appointment came to be issued in 1985 and they joined the service. It is settled law that the seniority of the candidates has to be reckoned from the date on which they joined the service and started discharging the duties of the post to which they came to be appointed. In that view, since the respondents joined the service in 1985-86, seniority cannot be given with retrospective effect from the date of the selection (sic of) the candidates appointed from the list of merit prepared by the Selection Board."

In the present case also though the respondents No.5 to 9 were higher in merit at the time of preparation of the panel in the year 1977, but they were appointed in the year 1980 after the criteria of age was relaxed and in the mean time the petitioner had joined his duties in the year 1978. The respondents No.5 to 9 remained silent for about 14 years and in the mean time the petitioner had acquired the vested right by joining his duties in the year 1978 vis-à-vis respondents No.5 to 9 who were appointed in the year 1980 and was promoted to the post of Inspector in the year 1986.

The upshot of the above discussion is that:

i) **the representations made by the respondents No.5 to 9 and similarly situated persons in the month of December, 1994 for the re-fixation of their seniority was highly belated;**

ii) **the respondents No.1 to 4 could not consider the representation of the respondents No.5 to 9 after a period of 14 years;**

iii) **the Department of Personnel and Training while making recommendations over looked the very important aspect while rendering a decision that the petitioner on the basis of the seniority list assigned had been further promoted to**

the post of Inspector in the year 1986 and the respondents No.5 to 9 were in fact promoted to the post of Inspector in the year 1988;

iv) the petitioner had started discharging the duties of Sub Inspector with effect from 20th March, 1978 and the respondents No.5 to 9 started discharging their duties with effect from July, 1980;

v) the respondents No.5 to 9 were not entitled to any notional seniority unsettling the settled things. Their date of appointment was to remain the actual date of appointment after invoking the relaxation in their favour with effect from 1980 and not 1978 as per Annexure R-5 dated 20th February, 1997;

vi) the corrigendum issued vide letter dated 16th March, 1998 (Annexure R-6) refixing the seniority of Inspectors with effect from 1986 instead of 1988 is also invalid;

vii) the petitioner was to be considered for the promotion to the higher post before the respondents No.5 to 9 on the basis of length of service beginning from 20th March, 1978; and

viii) the representation made by the petitioner has been rejected mechanically and without considering the merits of the case more particularly delay and laches.

Accordingly this writ petition is allowed. The Annexures R-IV dated 22.11.1995, R-III dated 29.11.1995, R-V dated 20th February, 1997, R-VI dated 16th March, 1998, R-VII dated 23rd December, 1997, P-4 dated 18th September, 2000 are quashed and set aside. The respondents are

directed to redraw the seniority list of Sub Inspectors/Inspectors as per the observations made hereinabove reflecting the petitioner senior to the respondents No.5 to 9 as Sub Inspector/GD and Inspector/GD for all intents and purposes. The respondents are further directed to consider the case of the petitioner for promotion to the post of Assistant Commandant on the basis of redrawn seniority. The entire exercise be undertaken by the respondents No.1 to 4 within a period of three months. There shall be no order as to costs.

(Rajiv Sharma), Judge

August 22, 2007
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